IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1120 OF 2005

Kashiram Mahadeo Parab ... Appellant (Ori.Plaintiff)

V/s

Narayan Tukaram Parab & ors. ... Respondents

Mr. Sudhir Prabhu with D.H. Keluskar for the appellant.

Mr. A.S. Khandeparkar for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 10TH OCT., 2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the Addl. District Judge, Sindhudurg at Oros, dated 2.3.2005 allowing the appeal and setting aside the order passed by the lower Court in R.C.S. No. 134 of 1996 decreeing the plaintiff's suit.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for partition and

separate possession of agricultural land situated at village Padave, Tal. Kudal, Dist. Sindhudurg.

Defendants contested the suit on various grounds inter-alia denying the plaintiff's allegations and sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and on the basis of available evidence came to the conclusion that the plaintiff had proved that the suit property was ancestral joint family property and it was liable for partition and separate possession. It was also held that the plaintiff was entitled for perpetual injunction against the defendants.

The appeal was carried to the District Court at Sindhudurg at Oros. The learned Addl. District Judge, after hearing both sides, dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant sought to raise a question to the effect that it was wrong on the part of the lower appellate Court in

holding that the jurisdiction of the Civil Court was barred to decide the issue of past tenancy when the issue involved in the matter was whether the acquisition of land by Tukaram i.e. father of the respondent Nos. 1 to 5 was on behalf of joint family or separate. Remaining issues sought to be raised are clearly issues of fact. In this regard, the factual matrix involved in the dispute show that the lower appellate Court came to the conclusion that the only remedy for the plaintiff was to challenge the decision in proceeding under Sec.32-G of the B.T. & A.L. Act by way of an appeal to the superior authority. The plaintiff did not move any authority inspite of the knowledge of such factor and, therefore, certificate under Sec.32-M was held to be the conclusive proof of title of deceased Tukaram in respect of land at Sr.Nos. 1 to 5 and, therefore, it was held that the Civil Court had no jurisdiction to decide the said issue. I do not find any fault with the finding recorded by the lower appellate Court. There are no other substantial questions of law involved in this appeal. The appeal is devoid of any merits and deserves to be dismissed.

In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1607

of 2005 also stands dismissed with no order as to costs.

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